

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GAYLE LESLEY GOMEZ
a.k.a. GAYLE LESLEY GLATMAN
33112 Marina Vista Drive
Dana Point, CA 92629

Case No. 2012-234

OAH No. 2011110588

Registered Nurse License No. 586899

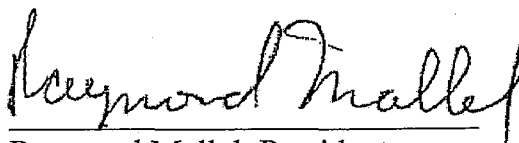
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on January 14, 2013.

IT IS SO ORDERED this 14th day of December, 2012.



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
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In the Matter of the Accusation Against:

GAYLE LESLEY GOMEZ, RN,
aka GAYLE LESLEY GLATMAN,

Registered Nurse License No. 586899,

Respondent.

Case No. 2012-234

OAH No. 2011110588

PROPOSED DECISION

Carla Nasoff, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on September 12, 2012.

William A. Buess, Deputy Attorney General, Office of the Attorney General, State of California, represented complainant, Louise R. Bailey, M.Ed., R.N., Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, State of California (Board).

Gilbert A. Garcia, Attorney at Law, represented respondent Gayle Lesley Gomez, aka Gayle Lesley Glatman, who was present throughout the administrative proceeding.

The matter was submitted on September 12, 2012.

CASE SUMMARY

Respondent admitted that she diverted the drugs Dilaudid¹ and Demerol² in 2005 from her employer at St. Joseph Hospital for her own personal use.

¹ Dilaudid is a Schedule II controlled substance pursuant to Health and Safety Code Section 11055, subdivision (b) (1)(K), and a dangerous drug under Business and Professions Code Section 4022. Dilaudid is a trade name for Hydromorphone.

² Demerol is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (c) (17), and a dangerous drug under Business and Professions Code Section 4022. Demerol is the trade name for the narcotic Meperidine hydrochloride.

From March 3, 2005, to May 6, 2005, respondent, a per diem registered nurse at St Joseph's Hospital, failed to properly chart the administration of drugs, failed to accurately account for the amount of wasted drugs, and admitted to diverted pain medications for her own personal use.

On May 6, 2005, a hospital staff member reported that respondent acted in an erratic and inappropriate manner. Respondent was requested to submit to a 'fitness for duty evaluation' by undergoing a drug/urine test. Respondent refused to undergo the urine/drug test and immediately quit her employment with St. Joseph's Hospital. Respondent testified that the reason she refused the urine test was because the results would have been positive because she ingested the drug Vicodin³ at lunch during her shift at work. Respondent testified that after she resigned, she left the hospital with a syringe filled with Dilaudid "in her pocket."

On July 20, 2005, respondent enrolled in the Board of Registered Nursing's Diversion Program, but did not complete the program. On October 3, 2007, respondent quit the diversion program and relapsed within the month.

Complainant seeks the revocation of respondent's nursing license based upon three causes of discipline for unprofessional conduct in that respondent; 1) diverted pain medications; 2) used drugs dangerous or injurious to herself and others; and 3) caused false, incorrect, inconsistent or unintelligible entries to be placed in the patient's records.

Respondent presented testimony of her commitment to the initial steps of sobriety and expressed remorse for her conduct. She testified that her sobriety date was February 26, 2009. However, in light of the seriousness of her admitted drug diversion, it is concluded that too little time has passed since respondent became sober to guarantee public protection even if she were to hold a restricted license. In addition, there was insufficient rehabilitation evidence submitted such as participation in an organized supervised rehabilitation program with random drug testing. Accordingly, respondent's license is revoked.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 12, 2011, complainant, Louise R. Bailey, M.Ed., R.N., Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, State of California (Board), signed the accusation in her official capacity. The accusation alleged three causes for discipline.

³ Vicodin is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug according to Business and Professions Code section 4022 that can be lawfully dispensed only by prescription.

- The first cause for discipline was for unprofessional conduct in that from March 2005 through May 2005, respondent, while working as a registered nurse at St. Joseph's Hospital in Orange, California, obtained, possessed, or administered by wasting and/or diverting, pain medications, specifically Meperidine⁴, Hydromorphone⁵ and Oxycodone⁶.
- The second cause for discipline was for unprofessional conduct in that from March 2005 through May 2005, respondent, while working as a registered nurse at St. Joseph's Hospital, wasted and/or diverted pain medications, specifically Meperidine, Hydromorphone and Oxycodone for her own use.
- The third cause for discipline was for unprofessional conduct in that from March 2005 through May 2005, respondent, while working as a registered nurse at St. Joseph's Hospital, caused false, incorrect, inconsistent or unintelligible entries to be made in patient records.

Respondent was served with the accusation and other required jurisdictional documents. She timely filed a notice of defense.

On September 12, 2012, the record in the administrative action was opened, jurisdictional documents were presented, documentary evidence and sworn testimony were received, closing arguments were given, the record was closed, and the matter was submitted.

Respondent's License History

2. On September 6, 2001, the Board issued registered nurse license number 586899 to respondent. That license was in full force and effect at all times relevant herein and according to the license certification introduced at hearing, expired on November 30 2010. However, Official Notice is taken of the Board of Registered Nursing website which indicates that the license actually expires on November 30, 2012, unless it is renewed or revoked.

⁴ Meperidine Hydrochloride is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (c)(17), and a dangerous drug under Business and Professions Code section 4022. Demerol is the trade name for Meperidine Hydrochloride.

⁵ Hydromorphone is a Scheduled II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(K), and a dangerous drug under Business and Professions Code section 4022. Dilaudid is a trade name for Hydromorphone.

⁶ Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(N), and a dangerous drug under Business and Professions Code section 4022.

Official Notice

3. Official Notice was taken of the Board's disciplinary guidelines found at California Code of Regulations, title 16, section 1444.5.

Respondent's Diversion Program History

4. On September 26, 2005, respondent agreed to participate in the Nursing Diversion Program as administered by MAXIMUS. The reason for the participation was due to respondent's admitted abuse of opiates. Respondent's clinical assessor at MAXIMUS, Brent Kahle, conducted an individual assessment and wrote that respondent used Vicodin (8-10 pills a day) and Dilaudid (5-6 mgs a day.) Kahle wrote that,

[Respondent] would stock pile during her shift and only used the Pyxis⁴ once on the day she was confronted and she resigned. She used the Vicodin for about 2 years and the Dilaudid for 6-7 months...The applicant estimates that her use of opiates began to escalate somewhere around January 2005; she recalled having taken home a patient's extra/remaining narcotic and first injecting SQ (subcutaneous) and then IV (intravenously). Depending on access to waste, applicant estimates she was injecting an average of several times per week, either Dilaudid or Demerol.

The duration of respondent's participation in Diversion was anticipated to be approximately three to five years as determined by the Diversion Evaluation Committee.

On October 3, 2007, the Diversion Program Manager, Millie Lowery, wrote a letter to the Enforcement Program Manager of the Board of Registered Nursing that respondent was terminated unsuccessfully from the Diversion Program based upon a "public safety risk." Ms. Lowery wrote, "Ms. Gomez's behavior over the past six weeks indicates strong suspicion of her not being in recovery, actively using...It is felt that she will return to work to obtain narcotics."

Investigative Reports

5. On May 17, 2005, the Board received a complaint from respondent's supervisor, Kathleen Penze, the Executive Director of Women's Services and Nursing Director at St Joseph's Hospital who alleged respondent diverted Demerol. On November 30, 2009, Larry Moore, a senior investigator for the Division of Investigation for the Board, prepared an investigative report regarding respondent's suspected drug diversion. Mr. Moore interviewed Ms. Penze who informed him that on May 6, 2005, respondent acted erratically, engaged in an argument with a physician and a patient's family member. Respondent refused a drug/urine test and resigned. On May 7, 2005, the Pyxis⁷ report

⁷ Pyxis is a trade name for an automated single-unit dose medication dispensing system that dispenses medications to an individual authorized to access the system.

showed that respondent signed out two (2) vials of Demerol for a patient not assigned to her and one dose was missing. The hospital pharmacy reports indicated that respondent engaged in "large amounts of narcotic sign outs." Ms. Penze's statements documented in the report were received as administrative hearsay.

On March 18, 2011, senior investigator, Tina Cleland prepared a supplemental investigative report. Ms. Cleland interviewed Ms. Penze and reviewed respondent's patient's records between the dates of February 28, 2005, to March 5, 2005. Ms. Cleland concluded that during this time, respondent failed to account for 8 mgs of Dilaudid and 4 tablets of Percocet⁸.

Kathleen Maria Penze's Testimony

6. Kathleen Maria Penze has worked as a registered nurse at St Joseph's Hospital for the past eleven years. She holds a bachelor and masters in nursing. She is currently working towards a Doctorate Degree in Executive Leadership and plans on graduating in December 2012.

In 2005, Ms. Penze worked as the Executive Director and House Supervisor for St Joseph's Hospital. In early 2005, Ms. Penze became aware of employee complaints regarding respondent's behavior and disagreements with the staff members in the orthopedic and gynecology departments. Respondent was advised to discuss her issues and staffing complaints with the employee assistance program coordinator, Linda Winston.

From March 3, 2005, through March 5, 2005, the medication reports showed that respondent withdrew Dilaudid and Percocet but failed to record it on the medication administration record. On March 3, 2005, the medication reports showed that respondent withdrew one dose of 2 mgs of Dilaudid at 18:55, but that it was not documented in the medication administration record.

On March 4, 2005, the medication reports recorded that respondent withdrew two tablets of Percocet at 11:38 and two tablets at 17:26, but that they were not documented in the medication administration record.

On March 5, 2005, the medication reports recorded that respondent withdrew three 2 mgs of Dilaudid at 07:50, 12:59 and 16:22 and one withdrawal of two tablets of Percocet at 11:55, but that these were not documented in the medication administration record. One milligram of Dilaudid was recorded as "wasted" but one milligram was unaccounted.

⁸ Percocet is the brand name for Oxycodone, a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(N), and a dangerous drug under Business and Professions Code section 4022.

The Pyxis Medication Report, generated by the St. Joseph's Hospital pharmacist in 2005, showed respondent took drugs from the Pyxis dispensing system for patients that were not assigned to her.

On April 13, 2005, a memorandum prepared by the pharmacist at St Joseph's Hospital indicated that on March 4, 2005, there was no documentation on the medication administration record that two Percocet were given at 11:38 pm or 17:26 for patient "CD." Also, an "Anomalous Usage Report" indicated that respondent's usage of narcotic withdrawals was greater than other colleagues in similar clinical settings.

On May 6, 2005, the hospital clinical coordinator notified Ms. Penze that respondent was "acting erratically." An argument ensued between a physician and respondent regarding a patient discharge. A verbal exchange also occurred between the respondent and the patient's family members. Ms. Penze prepared a report and wrote, "Gayle's behavior was deemed inappropriate and she was referred to the Nursing Supervisor to conduct a fitness for duty evaluation... Upon being asked to submit to a urine test, Gayle asked to resign her position, effective immediately. Gayle shared that she had taken a Vicodin at lunch time for a headache."

On May 7, 2005, a Pyxis Activity report showed that respondent signed out two (2) vials of Demerol for a patient who was not assigned to her. One of the two vials was missing. On May 17, 2005, Ms. Penze notified the Board regarding potential drug diversion and requested an inquiry.

Mr. Penzes was credible, straightforward and articulate.

Respondent's Testimony

7. On September 6, 2001, respondent received her California registered nurse license. From January 8, 2001, to May 6, 2005, respondent worked at St. Joseph's Hospital in Orange, California. She initially worked as a nurse's aid and, after successfully passing the registered nurse boards, worked per diem as registered nurse. From May 2006 to May 2007, she worked as an insurance verifier for Beech Street Corporations, but was laid off. From April 5, 2012 to the present, respondent worked as a detoxification supervisor and coordinator at NTS, a drug and alcohol rehabilitation facility. Respondent testified that she does not need to be licensed as a registered nurse to work in her current capacity. She lives with her disabled mother, earns minimum wages and helps support her niece with college expenses. She is active in her church and testified that she regularly attends Narcotics Anonymous (NA) meetings.

On May 6, 2005, she quit her registered nurse position at St. Joseph's Hospital because she refused to submit to a fitness for duty evaluation and undergo drug/urine testing. Respondent testified that the reason she refused to submit to a urine test was because, "I knew I would test positive for Vicodin." Respondent testified that on May 6, 2005, she ingested Vicodin during her lunch break while working as a registered nurse. She could not

recall where she obtained the Vicodin, either by prescription or from "someone else." When she resigned, she left the hospital with the drug Dilaudid "in her pocket." The drug was supposed to be administered to one of her patients, however, respondent testified that she failed to administer the Dilaudid and failed to properly chart the drug withdrawal.

On July 20, 2005, respondent enrolled in the nursing diversion program and also enrolled in a drug treatment facility called Hope by the Sea. Her participation in Hope by the Sea was a requirement of the diversion program. In September 2005, she began attending NA meetings. On October 3, 2007, she quit the diversion program because, "I wanted to take an extended vacation out of the country." She did not believe the diversion committee would have approved her request for a vacation outside the country for an extended period of time, so she quit the program.

Respondent relapsed 24 days after leaving the diversion program. From October 27, 2007 through 2008, respondent testified that she used drugs. She testified that her triggers were based on the fact that she was not working, divorced and was isolated from family and friends.

Respondent's claimed sobriety date is February 26, 2009. In February 2009, she successfully completed a 60-day treatment program. Respondent testified that she is now serious about staying sober because she is, "sick and tired of being sick and tired." She provided copies of some of her NA 12 step attendance cards from April 2010 to July 2010 and March 2012 to September 2012. Respondent testified, "I didn't bring all of the attendance cards for every meeting I attended because sometimes I would forget to take an attendance card. I attend more meetings than what I have submitted."

Respondent submitted the most recent performance evaluations from her employer dated September 11, 2012. The performance evaluation indicated that she exceeded the employer's expectations. Respondent testified that she recently began working with a life coach and meets regularly with her NA sponsor. She is active in her church. Respondent submitted one scheduled drug-screening urine test result dated September 11, 2012, the day before this hearing, which was negative.

Carol Rusznak's Testimony

8. Carol Rusznak was called on behalf of the respondent as her spiritual advisor. Ms. Rusznak has known respondent for two years and was aware of respondent's drug abuse. Ms. Rusznak testified that respondent openly discusses her drug addiction with others and is involved in the church. Ms. Rusznak testified, "It is a joy to see her... she exhibits a new personality."

Joyce Williams' Testimony

9. Joyce Williams is respondent's mother. Ms. Williams was a registered nurse for 50 years but is currently unemployed and disabled. Respondent lives with her mother

and sees her daily. Ms. Williams relies on respondent for her "principal financial support." Ms. William testified, "I have seen a dramatic change in my daughter...I can count on her now....she has made steps toward recovery."

Letters of Recommendation

10. Respondent submitted 23 letters of recommendation. The letters included those of co-workers in the field of addiction, family members, student nurses, church members, friends, her NA sponsor and her life coach. The overall theme of the letters was that respondent was a valued clinician in the field of addiction medicine, was a caring, supportive nurse who relates well with clients in an addiction treatment facility. Respondent was described as having superb critical thinking skills and problem solving abilities.

Overall, the letters of recommendation and witness testimony support respondent's current efforts to commit to a life of sobriety.

Evaluation

11. Respondent testified, without hesitation, that she diverted pain medications Demerol and Dilaudid from St Joseph's Hospital for her own personal use. She is to be commended for her honesty. Respondent told the MAXIMUS clinician that she used Vicodin 8-10 pills a day and Dilaudid 5-6 mgs a day and would "stock pile during her shift." She used Vicodin for two years and Dilaudid for six to seven months. Respondent admitted she ingested Vicodin during her shift at St. Joseph's Hospital on her last day of employment but could not recall how she obtained the drug, either by a prescription or "from someone else." Respondent admitted that Vicodin was her drug of choice when she relapsed. A review of the medical records and pharmacy records submitted demonstrated that on March 4, 2005, respondent signed out four (4) tablets of Percocet, but did not chart them on the medication administration record. Respondent admitted she took Dilaudid from the hospital on her termination date at St. Joseph's Hospital and failed to properly chart that in the medication administration record. Respondent admitted she failed to successfully complete the nursing diversion program where monitoring of her sobriety would be closely followed. Respondent relapsed within the month of leaving the diversion program.

Respondent appeared visibly upset and ashamed of her previous conduct. She was keenly aware of the risk she placed on her registered nurse license by diverting drugs while working as a registered nurse. Overall, respondent confronted her drug addiction head on at this administrative hearing.

Respondent passionately described how she currently embraces her sober lifestyle and has now dedicated herself to the principles of NA. She works the 12 steps of recovery, attends NA meetings and finds support from her NA sponsor and life coach. However, respondent failed to provide sufficient evidence of continued attendance at NA meetings or evidence of participation in a structured ongoing rehabilitation program where random drug

testing would provide evidence of compliance. Although her desired commitment to sobriety was evident, respondent did not provide sufficient evidence of rehabilitation.

Respondent was sincere and her testimony was heartfelt, but not enough time has passed and not enough rehabilitation evidence was submitted to conclude she that is not a danger to the public. Accordingly, given respondent's significant drug history, not enough time has passed to allow for a restrictive license at this time. The only measure that will protect the public at this time is revocation, especially in light of diversion's concern that respondent would use her employment to seek drugs.

Costs of Investigation and Enforcement

12. A certification of prosecution costs and a declaration prepared by complainant's attorney was introduced which established that the Attorney General's Office billed a total of \$28,656.50. There was, however, no itemization of the attorney or paralegal time that was spent on the case. The document submitted was a "Cost of Suit Summary" listing the total legal cost at \$19,422.50 and investigative cost at \$8,554, but failed to itemize any of the time. The amount requested was unreasonable given the small number of witness interviews and the lack of itemizations for the costs or legal fees involved. Based on the few interviews conducted, the few reports generated, the medical record reviewed including the pharmacy reports, a total reasonable amount to investigate and prosecute this matter is \$4,800.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856, holds that "clear and convincing proof to a reasonable certainty" applies in disciplinary proceedings seeking to revoke or suspend a professional license.

Relevant Statutory Provisions

2. Business and Professions Code section 482 requires the Board to establish criteria to evaluate rehabilitation.

3. Business and Professions Code section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

4. Business and Professions Code section 2750 provides in part that the Board may discipline any licensee, including a temporary or inactive license, for any reason provided in the Nursing Practice Act.

5. Business and Profession Code section 2764 provides in part that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Business and Professions Code section 2761 provides in part:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct...”

. . . .

7. Business and Professions Code section 2762, subdivisions (a)(b) and (e), provides that unprofessional conduct includes:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

“(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

“(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000 of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.”

“...

“(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.”

8. Business and Professions Code section 2770.11 states in part that if the program manager determines that a registered nurse is a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records fro that registered nurse to the board enforcement program.

The Board may use any of the records it receives under this subdivision in any disciplinary proceedings.

9. Business and Professions Code section 4021 states in part that a controlled substance means any substance listed in the Health and Safety Code section 11053.

10. Business and Professions Code section 4022 states in part that a dangerous drug means any drug or device unsafe for self-use in humans or animals and includes any drug that bears the legend "Caution: federal law prohibits dispensing without prescription" or any other drug that by federal or state law can be lawfully dispensed only on prescription.

11. Business and Professions Code section 4060 states in part that, "No person shall possess any controlled substance, except that furnished to a person upon the prescription..."

12. Business and Professions Code section 11170 states in part that no person shall prescribe, administer, or furnish a controlled substance for himself.

13. Business and Professions Code section 11173 states in part that no person shall obtain or attempt to obtain controlled substances or procure or attempt to procure the administration of or prescription for controlled substances by fraud, deceit, misrepresentation, or subterfuge, or by concealment of a material fact.

14. Business and Professions Code section 125.3 provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

Substantial Relationship

15. To establish a nexus between misconduct and fitness to practice a profession, it is not necessary for the misconduct to have occurred in the actual practice of the profession and a showing of patient harm is not required. It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757 at 771.)

16. Respondent's admitted diversion of controlled substances from her employer while at work as a registered nurse demonstrated that she possessed and obtained controlled substances in a manner dangerous or injurious to herself and others. Respondent admitted to leaving the hospital on her last day of employment with Demerol, that was prescribed for a patient, in her pocket. She admitted to taking Vicodin during her lunch break on her last day of employment but could not specifically recall how she obtained the drug. Although no patient harm occurred, none is required. Respondent's conduct was substantially related to the qualifications and fitness of a nurse because her misconduct reflects a lack of sound

professional and personal judgment that is relevant to her fitness and competence to practice nursing.

Disciplinary Guidelines

17. The Board's Disciplinary Guidelines (Guidelines) contain a section entitled "FACTORS TO BE CONSIDERED" which includes the following:

"In determining whether revocation, suspension or probation should be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offenses, or crimes under consideration;
2. Actual or potential harm to the public;
3. Actual or potential harm to any patient;
4. Prior disciplinary record;
5. Number and/or variety of current violations;
6. Mitigation evidence;
7. Rehabilitation evidence;
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation;
9. Overall criminal record;
10. Time passed since the act(s) or offense(s) occurred;
11. If applicable, evidence of expungment proceedings pursuant to Penal Code Section 1203.4."

18. The guidelines also contain recommended ranges of discipline for the various violations. The recommended discipline for violating Business and Professions Code section 2762, subdivision (a), is revocation unless there is an ongoing rehabilitation. Respondent failed to submit sufficient documented evidence of an ongoing rehabilitation program. Respondent provided some evidence of NA attendance, but no structured rehabilitation program with supervision and random drug testing to support her claim of sobriety. In addition, not enough time has passed, given respondent's significant drug use and diversion, to allow for a restrictive license at this time.

Rehabilitation

19. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

As Chief Justice Lucas observed, "The amount of evidence of rehabilitation required to justify admission varies according to the seriousness of the misconduct at issue." (*Kwasnik v. State Bar, supra.*, at 1070.)

Evaluation

20. Respondent fully acknowledged the wrongfulness of her past actions which is an essential step toward her rehabilitation. She expressed sincere remorse for her misconduct and her testimony was credible and heartfelt. Respondent used drugs in a manner dangerous to herself and others. She admitted to diverting pain medications from her employer for her own personal use. She admitted she quit the nursing diversion program in 2007 prior to completion and relapsed 24 days later. Given the significant drug abuse history and lack of sufficient documented evidence of an on-going rehabilitation program, it would be contrary to public protection to allow her to retain her license at this time, even on a restrictive basis.

Respondent is to be commended for the positive steps she has taken since 2009 to remain sober and she is encouraged to continue her work in the NA program. Upon a further showing of her sustained ability to remain sober, respondent is also encouraged to reapply to the Board for reinstatement of her license. In any reinstatement proceeding, respondent should produce evidence from a licensed health care provider (psychologist/psychiatrist) in the form of witness testimony and/or letters of recommendation to establish that she is fit to return to the practice of nursing. In addition, evidence of random drug testing over a sustained period of time would assist in supporting respondent's claim of sobriety. It is simply too soon to determine her commitment to sustained sobriety and public protection mandates revocation.

As to the First Cause for Discipline

21. Cause was established by clear and convincing evidence to impose discipline against respondent's registered nurse license for unprofessional conduct under Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (a), in that during the period of March 2005 through May 2005, respondent, while working as a registered nurse at St. Joseph's Hospital, obtained, possessed and diverted pain medications, specifically Hydromorphone and Meperidine, as set forth in the Factual Findings 4, 5, 6, 7, 11, and Legal Conclusion 1 to 20.

As to the Second Cause for Discipline

22. Cause was established by clear and convincing evidence to impose discipline against respondent's registered nurse license for unprofessional conduct under Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (b), in that during the period of March 2005 through May 2005, respondent, while working as a registered nurse at St. Joseph's Hospital, diverted pain medications, specifically Hydromorphone and Meperidine, for her own use as set forth in Factual Findings 4, 5, 6, 7, 11, and Legal Conclusion 1 to 20.

As to the Third Cause for Discipline

23. Cause was established by clear and convincing evidence to impose discipline against respondent's nursing license for unprofessional conduct under Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (e), in that during the period of March 2005 through May 2005, respondent, while working as a registered nurse at St. Joseph's Hospital, caused false, incorrect, and/or inconsistent entries to be made in the medical records as set forth in Factual Findings 5, 6, 7, 11 and Legal Conclusion 6 and 7.

Respondent admitted to the truth and accuracy of diverting drugs for her own personal use and failing to properly chart the administration of drugs while working as a registered nurse. Respondent expressed genuine remorse for her misconduct. Respondent's claimed sobriety date is February 26, 2009. Although respondent has demonstrated that she is on the road to recovery, given respondent's significant drug history, not enough time has passed to demonstrate sustained sobriety and public protection mandates revocation.

The Award of Reasonable Costs

24. Business and Professions Code section 125.3 provides in part:

"(a) . . . in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

...

(d) The administrative law judge shall make a proposed finding of the amount of the reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a) . . ."

Zuckerman v. State Board of Chiropractic Examiners (2002) 29 Cal.4th 32 held that the imposition of costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5 did not violate due process. However, the court held that it was incumbent on the Board to exercise its discretion to reduce or eliminate cost awards in such a manner that it did not "deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing." The Court set forth four factors required to be considered in deciding whether to reduce or eliminate costs: (1) Whether the chiropractor used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the chiropractor had a "subjective" good faith belief in the merits of his position; (3) whether the chiropractor raised a "colorable challenge" to the proposed discipline; and (4) whether the chiropractor had the financial ability to make payments.

Since the Board of Chiropractic Examiner's cost recovery provision and Business and Professions Code section 125.3 have substantially the same language, *Zuckerman's* reasoning applies to section Business and Professions Code 125.3. Respondent has limited financial ability earning minimum wages while assisting with the care of her disabled mother and her niece's college expenses. Moreover, there were no submitted itemizations of legal or investigative bills. Therefore, the total reasonable cost to investigate and prosecute this matter is \$4,800.

ORDER

IT IS HEREBY ORDERED that registered nurse license number 586899 issued to respondent Gayle Lesley Gomez, aka Gayle Lesley Glatman, is revoked.

IT IS FURTHER ORDERED that respondent shall pay \$4,800 to the Board for its costs to investigate and prosecute of this matter. A payment plan may be instituted, but these costs must be paid in full prior to respondent petitioning the Board for reinstatement.

DATED: September 25, 2012

A handwritten signature in black ink, appearing to read "Carla Nasoff", is written over a horizontal line.

CARLA NASOFF
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

Accusation Case No. 2012-234

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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. **2012-234**

12 **GAYLE LESLEY GOMEZ, RN aka**
13 **GAYLE LESLEY GLATMAN**
14 **33112 Marina Vista Drive**
Dana Point, CA 92629

ACCUSATION

15 **Registered Nurse No. 586899**

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about September 6, 2001, the Board of Registered Nursing issued Registered
25 Nurse Number 586899 to Gayle Gomez, RN (Respondent). The Registered Nurse was in full
26 force and effect at all times relevant to the charges brought herein and will expire on November
27 30, 2012, unless renewed.
28

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

7. Section 2811(b) of the Code states:

“Each such license not renewed in accordance with this section shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee required by this chapter and upon submission of such proof of the applicant’s qualifications as may be required by the board, except that during such eight-year period no examination shall be required as a condition for the reinstatement of any such expired license which has lapsed solely by reason of nonpayment of the renewal fee. After the expiration of such eight-year period the board may require as a condition of reinstatement that the applicant pass such examination as it deems necessary to determine his present fitness to resume the practice of professional nursing.”

STATUTORY PROVISIONS

8. Section 2761 of the Code states:

1 "The board may take disciplinary action against a certified or licensed nurse or deny an
2 application for a certificate or license for any of the following:

3 "(a) Unprofessional conduct, ..."

4 9. Section 2762 of the Code states:

5 "In addition to other acts constituting unprofessional conduct within the meaning of this
6 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
7 chapter to do any of the following:

8 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
9 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
10 administer to another, any controlled substance as defined in Division 10 (commencing with
11 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
12 defined in Section 4022.

13 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
14 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
15 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
16 himself or herself, any other person, or the public or to the extent that such use impairs his or her
17 ability to conduct with safety to the public the practice authorized by his or her license."

18 "..."

19 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any
20 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this
21 section."

22 10. Section 2770.11 of the Code states, in pertinent part:

23 "(b) If the program manager determines that a registered nurse, who is denied admission
24 into the program or terminated from the program, presents a threat to the public or his or her own
25 health and safety, the program manager shall report the name and license number, along with a
26 copy of all diversion records for that registered nurse, to the board's enforcement program. The
27 board may use any of the records it receives under this subdivision in any disciplinary
28 proceeding."

1 11. Section 4021 of the Code states:

2 “‘Controlled substance’ means any substance listed in chapter 2 (commencing with Section
3 11053) of Division 10 of the Health and Safety Code.”

4 12. Section 4022 of the Code states:

5 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in
6 humans or animals, and includes the following:

7 (a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
8 prescription,’ ‘Rx only,’ or words of similar import.

9 (b)...

10 (c) Any other drug or device that by federal or state law can be lawfully dispensed only on
11 prescription or furnished pursuant to Section 4006.”

12 13. Section 4060 of the Code states:

13 “No person shall possess any controlled substance, except that furnished to a person upon
14 the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug
15 order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner
16 pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall
17 not apply to the possession of any controlled substance by a manufacturer, whole-saler,
18 pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner,
19 or physician assistant, when in stock in containers correctly labeled with the name and address of
20 the supplier or producer.

21 Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, or a
22 physician assistant to order his or her own stock of dangerous drugs and devices.”

23 14. Section 11170 of the Health and Safety Code states:

24 “No person shall prescribe, administer, or furnish a controlled substance for himself.”

25 15. Section 11173 of the Health and Safety Code states:

26 “(a) Not person shall obtain or attempt to obtain controlled substances, or procure or
27 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
28 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant, or other authorized person.

(d) No person shall affix any false or forged label to a package or receptacle containing controlled substances."

COST RECOVERY

16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

17. Demerol is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(c)(17) and a dangerous drug under Business and Professions Code section 4022. Demerol is a trade name for the narcotic substance Pethidine or Meperidine Hydrochloride.

18. Dilaudid is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(K) and a dangerous drug under Business and Professions Code section 4022. Dilaudid is a trade name for Hydromorphone.

19. Percocet is the brand name for Oxycodone, a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(N) and a dangerous drug under Business and Professions Code section 4022.

20. Vicodin is a Schedule III controlled substance pursuant to Health and Safety Code section 11056(e)(4) and a dangerous drug according to Business and Professions Code section 4022 that can be lawfully dispensed only by prescription.

FACTUAL ALLEGATIONS

21. All the incidents alleged herein occurred while Respondent worked as a Registered Nurse at St. Joseph Hospital. On March 3, 2005, medication reports recorded that Respondent

1 withdrew one dose of 2mg of Hydromorphone at 18:55, for patient "CD." The Medication
2 Administration Record did not record administration of the 18:55 medication.

3 22. On March 4, 2005, medication reports recorded that Respondent withdrew 2tabs of
4 Percocet at 11:38 and 17:26 for patient "CD." Also on March 4, 2005, the report noted two
5 withdrawals at 08:25 and 15:10 of 2mg Hydromorphone. The report recorded two 1mg witnessed
6 as "Wasted." The Medication Administration Record did not record administration of the
7 medication.

8 23. On March 5, 2005, medication reports recorded that Respondent withdrew three 2mg
9 doses of Hydromorphone at 07:50, 12:59 and 16:22 and one withdrawal of 2tabs of Percocet at
10 11:55 for patient "CD." The Medication Administration Record did not record administration of
11 the medication. The report recorded 1mg witnessed as "Wasted."

12 24. On May 6, 2005, staff reported that Respondent appeared to be acting erratically,
13 specifically, engaging in arguments with a physician concerning a patient discharge which
14 included an exchange with a patient's family member. Respondent's conduct was determined to
15 be inappropriate and she was referred to the Nursing Supervisor for a "Fitness for Duty"
16 evaluation. At the "Fitness for Duty" evaluation Respondent was asked to submit to a urine test.
17 Respondent refused to take the test. Respondent stated that earlier that day she took Vicodin for
18 headache pain and asked to resign immediately. Respondent was escorted to her unit to remove
19 her belongings and left the hospital. Respondent's employment at St. Joseph Medical Hospital
20 ended.

21 25. On May 7, 2005, a Pyxis ("Pyxis" is a trade name for an automated single-unit dose
22 medication dispensing system that dispenses medications to an individual authorized to access the
23 system) report showed that Respondent previously signed out three vials, the first at 8:00 a.m., the
24 second at 8:43 a.m., and the third at 6:53 p.m., of Meperidine injection, 50mg each, for a patient,
25 "EJ", who was not assigned to Respondent. One vial was co-signed by another RN and listed as
26 "Wasted." The other vials were unaccounted for.

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26. On or about July 20, 2005, Respondent enrolled in the Board of Registered Nursing's Diversion Program. On or about October 3, 2007, Respondent was terminated from the program as a "public safety risk."

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct—Obtain, Possess or Administer Controlled Substance)

27. Respondent is subject to disciplinary action under section 2761(a) and 2762(a) in that during the period March through May 2005, Respondent, while working as a Registered Nurse at St. Joseph Hospital in Orange, California, obtained, possessed or administered by wasting and/or diverting pain medications, specifically Meperidine, Hydromorphone and Oxycodone as more fully set forth in paragraphs 21 through 26 above and incorporated herein by this reference.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Dangerous or Injurious Use of a Controlled Substance)

28. Respondent is subject to disciplinary action under section 2761(a) and 2762(b) in that during the period March through May 2005, Respondent, while working as a Registered Nurse at St. Joseph Hospital in Orange California, wasted and/or diverted pain medications, specifically Meperidine, Hydromorphone and Oxycodone for her own use as more fully set forth in paragraphs 21 through 26 above and incorporated herein by this reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct-False, Incorrect, Inconsistent, or Unintelligible Entries)

29. Respondent is subject to disciplinary action under section 2761(a) and 2762(e) in that during the period March through May 2005, Respondent, while working as a Registered Nurse at St. Joseph Hospital in Orange California, caused false, incorrect, inconsistent, or unintelligible entries to be made in records as more fully set forth in paragraphs 21 through 26 above and incorporated herein by this reference.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

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1. Revoking or suspending Registered Nurse Number 586899, issued to Gayle Gomez, RN;
2. Ordering Gayle Gomez to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: October 12, 2011 *Louise R. Bailey*
for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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